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Final Order No. BPR-99-06165 Date 11-4-99

FILED

Department of Business and Professional Regulation

AGENCY CLERK

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By: Brandon M. Nichols

STATE OF FLORIDA
DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION
FLORIDA REAL ESTATE COMMISSION

FILED
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DIVISION OF
ADMINISTRATIVE
HEARINGS

DEPARTMENT OF BUSINESS AND
PROFESSIONAL REGULATION,
DIVISION OF REAL ESTATE

CASE NO. 98-80558
98-80215
AP 98-80216
98-80217
98-81249
98-81308

Petitioner

vs.

DOAH CASE NO. 98-4081
98-2722

REM-CWS

NOEL D. CLARK, JR. and
ABC HOME BROKERS, INC.

Respondents

_____ /

DEPARTMENT OF BUSINESS AND
PROFESSIONAL REGULATION,
DIVISION OF REAL ESTATE

Petitioner

vs.

NOEL D. CLARK, JR. , BETSY L. BRENNAN
and ABC HOME BROKERS, INC.

Respondents

_____ /

FINAL ORDER

On October 19, 1999, pursuant to ss. 120.569 and 120.57(1), *Florida Statutes*, the Florida Real Estate Commission heard this case to issue a Final Order.

Administrative Law Judge Robert E. Meale of the Division of Administrative Hearings presided over a formal hearing on May 7, 1999. On July 28, 1999, a Recommended Order was issued, a copy of which is attached hereto as Exhibit A and made a part hereof.

The Petitioner filed Exceptions to the Recommended Order, which is attached hereto as Exhibit B and made a part hereof. Respondents filed a Response to Petitioner's Exceptions to ALJ's Recommended Order, which is attached hereto as Exhibit C and made a part hereof.

After completely reviewing the record and being otherwise fully advised, the Commission makes the following rulings on the Petitioner's Exceptions:

Petitioner withdrew Exception No. 1, which addressed paragraph 15 in the Findings of Fact.

The Commission accepts Petitioner's Exception No. 2, which addresses the second sentence in paragraph no. 21 of the Findings of Fact in the Recommended Order. The Commission finds that the Respondent Noel D. Clark, Jr. ("Clark") was materially involved in the transaction and responsible for the actions of his salesperson, Betsy L. Brennan ("Brennan"). The Commission's ruling is based upon transcript pages 47, 50, 56-57, 74, 192 and 228-229 and exhibit 13.

Based upon Petitioner's Exception No. 2, the Commission amends the second sentence in paragraph no. 21 to be modified and read as follows:

"Petitioner has established that Clark, as broker, was materially involved in the real estate transaction at issue, and is responsible for his

actions as a real estate agent, and those of his salesperson, Brennan."

The Commission accepts Petitioner's Exception No. 3, which addresses sentences three and four in paragraph no. 23 of the Findings of Fact in the Recommended Order. The Commission finds that Respondents Clark, Brennan and ABC Home Brokers, Inc. ("ABC") failed to file an affirmative defense or show that Brennan was unaware allegations in the Administrative Complaint informed her that she faced a charge of misrepresentation in the sales contract with Charles and Cynthia Harvey ("Harveys").

Based upon Petitioner's Exception No. 3, the Commission strikes sentences three and four in paragraph no. 23.

The Commission accepts Petitioner's Exception No. 4, which addresses sentence four in paragraph no. 26 of the Findings of Fact in the Recommended Order. The Commission finds that Respondents Clark, Brennan and ABC failed to file an affirmative defense or show that Brennan was unaware that allegations in the Administrative Complaint informed her that she faced a charge of misrepresentation for her misstatements in the January 26, 1998 letter to the Harveys.

Based upon Petitioner's Exception No. 4, the Commission strikes sentence four in paragraph no. 26.

The Commission accepts Petitioner's Exception No. 5, which addresses paragraph no. 27 of the Findings of Fact in the Recommended Order. The Commission finds that paragraph no. 27 was an improper Finding of Fact and should be included as part of paragraph 38 of the Conclusions of Law.

Based upon Petitioner's Exception No. 5, the Commission strikes paragraph no. 27.

The Commission accepts Petitioner's Exception No. 6, which addresses paragraph no. 38 of the Conclusions of Law in the Recommended Order. The Commission finds that paragraph no. 38 is in error because

Petitioner proved its allegations against all Respondents that they committed fraud and misrepresentation in their purported purchase of a mobile home from Laura Hanson ("Hanson") and in their subsequent attempted sale of the same mobile home to the Harveys. Florida Board of Pharmacy v. Levin, 190 So.2d 768, 770 (Fla. 1966); Seminole County Board of County Commissioners v. Long, 422 So.2d 938, 940 (Fla. 5th DCA 1982); Ahern v. Florida Real Estate Commission, 6 So.2d 857 (Fla. 1942); and Erwin v. Dept. of Professional and Occupational Regulation, Division of Professions, Board of Dentistry, 320 So.2d 2 (Fla. 2nd DCA 1975).

The Commission rejects Petitioner's Exception No. 7, which argued that Clark and ABC failed to produce its books and records upon demand.

The Commission rejects Petitioner's Exception No. 8, which argued that the Administrative Law Judge ("ALJ") refused to keep the record open as requested by Petitioner during the formal hearing to allow witness Hanson to testify.

The Commission accepts Petitioner's Exception No. 9, which addresses the Recommendation found in the Recommended Order, wherein the ALJ recommended the Administrative Complaints filed against the Respondents be dismissed.

Therefore, based upon a complete review of the record, the Exceptions to the Recommended Order filed by Petitioner and the Responses to the Exceptions filed by Respondents the Commission finds that Respondents Clark, Brennan and ABC have violated s.475.25(1)(b), *Florida Statutes*, and are guilty of breach of trust in a business transaction.

Therefore, the Commission **ORDERS** that Respondent Clark pay an administrative fine of \$1,000.00 within six months of the filing date of this Order or the Respondent's license shall be suspended until such time as the fine and costs are paid in full. This period of suspension shall not exceed 10 years.

It is further **ORDERED** that the license of Respondent Clark be suspended for one year. At the conclusion of the suspension, the Respondent is directed to contact the Records Section of the Division of Real Estate at P.O. Box 1900, Orlando, Florida 32802 or (407) 245-0825 to secure the proper forms for reinstatement of the suspended license.

It is further **ORDERED** that Respondent Clark be placed on probation for a period of 12 months during which time the licensee shall enroll in and satisfactorily complete a 30 hour broker management course. These course hours are in addition to any other education required to maintain a valid and current license.

The Commission **ORDERS** Respondent Brennan pay an administrative fine of \$1,000.00 within six months of the filing date of this Order or the Respondent's license shall be suspended until such time as the fine and costs are paid in full. This period of suspension shall not exceed 10 years.

It is further **ORDERED** that the license of Respondent Brennan be suspended for six months. At the conclusion of the suspension, the Respondent is directed to contact the Records Section of the Division of Real Estate at P.O. Box 1900, Orlando, Florida 32802 or (407) 245-0825 to secure the proper forms for reinstatement of the suspended license.

It is further **ORDERED** that Respondent Brennan be placed on probation for a period of 12 months during which time the licensee shall enroll in and satisfactorily complete a 45-hour post-licensing course. These course hours are in addition to any other education required to maintain a valid and current license.

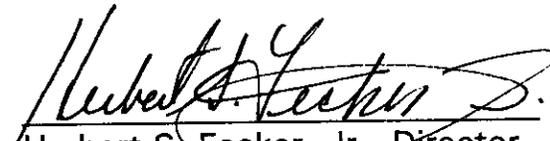
The Commission **ORDERS** Respondent ABC Mobile Homes, Inc. be reprimanded.

This Final Order shall be effective 30 days from date of filing with the Clerk of the Department of Business and Professional Regulation. However,

any party affected by this Order has the right to seek judicial review, pursuant to s.120.68, *Florida Statutes*, and to Rule 9.110, *Florida Rules of Appellate Procedure*.

Within 30 days of the filing date of this Final Order, review proceedings may be instituted by filing a Notice of Appeal with the Clerk of the Department of Business and Professional Regulation at Suite 309, North Tower, 400 West Robinson Street, Orlando, Florida 32801. At the same time, a copy of the Notice of Appeal with applicable filing fees must be filed with the appropriate District Court of Appeal.

DONE AND ORDERED this 19th day of October 1999 in Orlando, Florida.


Herbert S. Fecker, Jr., Director
Division of Real Estate

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing was sent by U.S. Certified Mail to: Noel D. Clark, Jr. and Betsy L. Brennan, 18060 N. Tamiami Trail, North Fort Myers, Florida 33917; to Robert E. Meale, Administrative Law Judge, Division of Administrative Hearings, 1230 Apalachee Parkway,

Tallahassee, FL 32399-3060; and a copy provided to Sunia Y. Marsh,
Esquire, DBPR, Post Office Box 1900, Orlando, FL 32802, this 4th day of
November 1999.

Brandi M. Nichols

JRM:JS